UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case Nos. 08-13555(JMP); 08-01420(JMP)(SIPA)

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In the Matters of:

LEHMAN BROTHERS HOLDINGS INC., et al.

Debtors.

- -x

LEHMAN BROTHERS INC.,

Debtor.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

January 13, 2011

10:20 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

STATUS REPORT on Plan Process

HEARING re Debtors' Motion for Entry of an Order Clarifying the Scope of the Procedures for the Settlement of Prepetition Derivative Contracts

SECURITIES INVESTOR PROTECTION CORPORATION PROCEEDINGS: HEARING re Second Motion of Unclaimed Property Recovery Service, Inc. for an Order Authorizing and Directing Immediate Payment Pursuant to this Court's May 25, 2010 Order

Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE CLERK: All rise.

THE COURT: Be seated, please. Good morning. We're off to a little bit of a late start but I understand it's attributable to security downstairs and not to anybody else's fault.

MR. MILLER: There are people downstairs, Your Honor, who are selling their places in line to Mr. Marsal. Good morning, Your Honor.

THE COURT: Good morning. How are you?

MR. MILLER: Well, Your Honor. On behalf of everybody assembled, a happy new year to you.

THE COURT: Thank you. Same.

MR. MILLER: Your Honor, on the agenda -- the first matter on the agenda is a status report. And this is sort of an auspicious date. This is the first omnibus hearing in 2011. Maybe this is the year of the confirmation of the Chapter 11 case of these debtors. And I wanted to put the status conference into perspective, Your Honor.

At a hearing held on November 17, 2010, the Court remarked that the hearing did not provide any information or illumination at all as to how the Chapter 11 cases were progressing on an overall basis. The Court noted that the aspirational statement made by Mr. Marsal in the state of the estate report on September 22nd that a Chapter 11 plan might be

forthcoming and confirmed before the end of the first quarter of 2011. Fortunately, the Court promptly emphasized the adjective "aspirational". Clearly, there will not be a confirmation of a plan before the end of the quarter. But that is not to say that progress has not been made. Progress is being made but there remain, as one might anticipate, outstanding issues in these extraordinary cases that will be alluded to in the presentations that are to be made this morning.

The Court requested on November 17 that in the future a presentation be made by the debtors as to the progress being made in the plan process, the problems, if any, that exist with respect to the successful formulation of a consensual plan and what, if any, protocols of communication exist between the creditor constituencies and the debtor. The Court emphasized that a progress report of a public nature would be appropriate in one of the next two omnibus hearings. In the face of the ongoing discussions between the debtors, the unsecured creditors' committee and other constituencies and the hope of achieving a higher level of consensus, the debtors elected to make a progress report in 2011 and so notify the Court and other parties in interest.

Since the Court was advised of the debtors' intentions and on December 15, 2010, the ad hoc group of LBHI senior creditors, who assert that they hold claims against LBH

approximating twelve million dollars, filed a proposed joint Chapter 11 plan for the debtors together with a proposed disclosure statement. The ad hoc group plan has taken a different tack than the debtors' proposed Chapter 11 plan. That was filed in March of 2010. The ad hoc group plan is premised upon a substantive consolidation of certain of the debtors as a predicate to an overall compromise settlement of the multi-factual and legal issues that have permeated these cases. The debtors do not agree with the ad hoc group's proposed plan and have assiduously continued the exhaustive process of negotiations with the unsecured creditors' committee and multiple creditor constituencies that commenced in April of 2010. Those negotiations have progressed to the point that the debtors' first amended plan is being finalized as we speak and will be filed with a disclosure statement within the next week to ten days.

Now, for the purposes of presenting the requested progress report as to the subject mentioned and continuing in the somewhat orthodox fashion and have become the course of conduct in these status conferences, the debtors' management represented by Mr. Marsal as CEO, Mr. Suckow as chief operating officer, and Mr. Ehrmann as senior officer and plan negotiator, will present to the Court a high level overview of the administration of the Chapter 11 cases and the status of the plan process.

I will emphasize that since the filing of the debtors' proposed Chapter 11 plan in March of 2010, the debtors have been consumed with extended meetings and negotiations among the debtors, the unsecured creditors' committee, representatives of foreign affiliates, major creditors, big banks and various ad hoc groups as will be more broadly described by the debtors' management.

The first amended plan, when filed, will take into account the input, comments and suggestions of many parties, even those of the ad hoc group, and, from the debtors' perspective, represent and economic, fair, rational resolution of the issues and positions taken by the parties in interest. The debtors will also suggest in the following presentation the process that they propose to pursue during the next thirty to sixty days. The debtors' objective is to achieve, if at all possible, a consensual plan. It is their hope that the parties in interest share that objective and will continue to work together cooperatively to accomplish a fair, reasonable economic resolution of these cases.

So in the context of these cases, Your Honor, this is really not the end of the beginning, but I would suggest, Your Honor, that this is the beginning of the end. And in that context, Your Honor, unless Your Honor has some questions, I would turn the lectern over to Mr. Marsal.

THE COURT: I have no questions at the moment. Thank

you.

MR. MILLER: Mr. Marsal?

MR. MARSAL: Good morning, Your Honor.

THE COURT: Good morning.

MR. MARSAL: Your Honor, what I'd like to do in a very simplistic fashion to give a status report is really to answer the four questions that you see outlined in the presentation.

First question is what's happening with the assets, with the asset pie, both in terms of the size of the pie and the composition. And, of course, having cash at a time of a -- for distribution purposes is very important to this process.

The second point -- the second question to be addressed is what does the claims picture look like. Lots of claims were filed. Many of those claims have been heard or cleaned up. What's that picture going to look like and how is that process going?

The third question is how do you propose for the asset pie to be divided up. We have issues, as Mr. Miller just pointed out, between the holding company and as the parent -- the parent creditors, the subsidiary creditors, intercompany issues and their guaranty issues all of which address the question of how will this pie be allocated among parties.

And then last but not least, once we get through all that, is there any other challenges we have, and the answer is yes. On the derivative front, we have a substantial challenge

of trying to -- of a way through these numerous contracts that we have. But we actually think we have a pretty interesting settlement for -- framework for settlement of those disputes.

What I'm going to do, Your Honor, is I'm going to cover points 1 and 2 very briefly. Then I'm going to turn it over to John Suckow, who is my partner and president of Lehman today who's really been the architect of this plan and chief negotiator of this plan, and then Mr. Ehrmann, who's handled both the plan and the derivative segment, for the final question.

Turning the page to my segment, what's the size and composition of the asset pie? At the September hearing, we indicated that the estimated net recovery to the estate was going to be 57.5 billion dollars. As of the end of December, six months, we believe the estimated recovery will be 60.1 billion dollars. The cash composition has increased to twenty-four billion. The financial assets, or assets remaining -- I'll just call them the illiquid assets that remain to be liquidated -- has gone down but the projected reinvestment that is required to realize these assets has also declined.

What I would point out to Your Honor -- the footnotes are very important. The financial assets have an estimate of 37.1 billion. That has to do with gross proceeds. As you know, present value is very different from gross proceeds, the present value issues of the timing of the transaction. What

we're seeing is an acceleration in the marketplace of transactions. As liquidity has returned, we're seeing the -- an ability to liquefy -- improving. So -- and, of course, the second factor in a present value is the discount rate. There's no two creditors that have the same discount rate. So we leave it to the creditors to assess what discount rates are going to apply for our present value. But the key here is that this is gross proceeds.

The other key points I would make to you is this does not -- footnote number 3, this does not include any deduction for IRS priority claims nor does it include any cost of completing the administration of the case. And also it does not include any collection of -- or any recovery from the litigations we have which are numerous.

So there's upside potentially on the receivable side, on the litigation front. But clearly, there are expenses that are not included in this.

The team that's working this problem -- or, before I get to that -- I'm sorry. What's the status of liquidating this illiquid asset pool of thirty-seven billion? The answer to that is the market or refinancings has improved and continues to improve. The levels on the commercial side and multi-family side in terms of cap rates are approaching what they were in mid-2008. The peak of that -- of cap rates is probably mid-2006-2007. But this is still we think is

increasingly becoming a very attractive market if it's not only an attractive market.

On the investment side, M&A activities picking up. So we look at this as a golden opportunity right now to convert a significant amount of the illiquid assets and the cash over the next six to twelve months.

One other item I'd point out to you is that the opportunity costs -- as you know in a Chapter 11, any cash that we accumulate has to be invested in permitted investments which would be short term Treasury bills which are -- have earned us anywhere from twenty-five basis points to forty-five basis points throughout the case, not a very attractive investment strategy. By holding onto the assets, we've been able to get a significantly greater appreciation on the assets. So now, the time to move -- I think, the support of the unsecured committee in this process, I think, is going to be paying big dividends to the estate.

We would expect, over the next six to twelve months, to have a much more aggressive disposition strategy particularly on the strategic real estate assets and that you're going to see some major transactions coming before this Court.

In terms of the resources that are employed to generate the asset management side of the house, this is just a timeline as to what's been happening. Again, the case needs to

be bifurcated into asset management and claims administration. This is -- on simply the asset management side, we see that the two categories, Lehman personnel and A&M personnel, what the picture is on this front, for informational purposes only.

Going on to the second question that was raised in -- what does the claims picture look like, across the horizontal axis, you've got a series of what the original claims that were filed and then as adjusted as cleaned up over time at various points starting with April of 2010, moving to September 2010 and then the most likely December 2010. Down the vertical axis, you've got a breakdown of the various claim categories that we have starting with LBHI and then moving on down to the various guaranty or intercompany claims.

What I would point to is the bottom line which is in bold, "Total Claims", 1.162 trillion claims was filed by the bar date. Of that 1.162, looking above two lines, 860 billion related to the parent, 302 billion related to the various subsidiary. Moving on -- again, moving left to right, you'll see in April we concluded that there was lots of errors and duplicates in the filings which brought the number down to 605 billion. However, likely claims, we felt at that point at the end of the day we were still looking at 260 when we got through all the scrubbings that needed to be done because of the exaggeration.

That process continued into September when we brought

it down from 605 to 363, about the same likely allowed picture. And then finally, in December, the number has been brought down to 319 with 272 million of allowed claims. This captures, by the way, Your Honor, the proposed -- the revised POR that the company will be coming out with in the next week to ten days.

Below that, you see the subsidiary claims. Significant progress on this front. It starts at 302 billion. The first cut at it was down to 135. And now we are at a level, we believe, allowed claims will ultimately be fifty billion dollars. So fundamentally, I think where we are today in the far right-hand column, you see, third line from the bottom, we believe that the allowed claims will ultimately be about 272 billion dollars on the Holdings company level and about fifty billion dollars on the subsidiary level for a total of 322 billion. So it's really been an exaggeration of about four times from the original filing.

In terms of the resources, lots of resources because everyone has their right to their -- doesn't seem to be a problem with anyone claiming whatever they want to claim. But each claim is important and it has to be gotten -- it has to be investigated. And you see the cost to the estate of doing so. I mean, there's a significant cost up there, in terms of resources, manpower, there's more resources being devoted to the claims side of the house than to the asset management side of the house. And again, same schedule as you looked at

before, timeline, and then the various activities claims management, the finance and the legal litigation support groups that are needed for these efforts.

And with that, John -- I'd like to -- the third question on how do you propose for the asset pie to be allocated, I'd like to introduce John and ask him to walk you through it.

MR. SUCKOW: Good morning, Your Honor.

THE COURT: Good morning.

MR. SUCKOW: Two things before I get going here. I'm not sure if Mr. Miller or Mr. Marsal mentioned that this presentation is now available as an 8K and also on our website should the parties be interested in that.

Mr. Marsal just referred to me as an architect of this plan. I think that's overstating it. That may be true of the plan that we filed in March. But the plan that we're hopeful to be filing in the very near term, I'd view that there are many architects. There are an awful lot of constituents not the least of which is our unsecured creditors' committee and advisors that have weighed in. I think a big part of our process over the last nine months or so, we've been listening to people's views.

Page 8 -- this is a recap of what Mr. Marsal prepared for the Court at that time. I think he indicated that we would be continuing our focus on claims. We've continued to focus

our efforts on trying to reach agreement with our foreign affiliates and that we would engage our domestic creditor affiliates. And I will report on the progress of each and I think there is progress on each of those.

The next slide is a discussion of the foreign affiliates. We do believe that there has been substantial progress made. There were two more global protocol group meetings. I think that brings it to a total of seven meetings dedicated to the LBHI plan. And in fact, I believe we have another meeting in two weeks of the same group.

There have been a number of exchanges, of proposals for settlement agreement to be executed by the foreign affiliates. And we're not quite there yet but I think we're making progress. Likewise, bilateral negotiations between our entities and the foreign entities have continued. Good progress made with LB Bankhaus. In fact, Dr. Frege is here today in the courtroom. We appreciate all the work that he put it into this.

LBT -- I think we're making good progress. I think we're pretty close with the trustee and we've received an awful lot of input from various creditor groups related to LBT. And we feel as though we're close to an economic compromise anyway with the LB Asian entities which is led -- managed by KPMG.

On the LBIE front, I think Mr. Marsal reported on that at the last hearing. I would say where we are is the

differences between the way we view the world and they view the world are narrowing. But in terms of the resolution, still uncertain. But I think we're continuing to talk and I believe we're meeting again with them the first week of February.

The only entity or receivership where it seems like we've taken a step back is LB Finance which is the Swiss entity. We had some momentum going and we seemed to have entered the cone of silence. So we're not giving that up yet but it's been a step back. We'll begin to push that again now.

THE COURT: Without opening up a can of worms, is there any discloseable reason that you can identify for the problems with LB Finance?

MR. SUCKOW: Your Honor, I would probably just leave it as -- it's putting me in a position to guess a little bit. But I am hopeful that with the filing of the plan that perhaps when they see what we're proposing, perhaps that's been their reason for backing off of negotiation. I don't know beyond that. I'm guessing a little bit.

THE COURT: Okay.

MR. SUCKOW: Okay? Turning the page to page 10, on the domestic affiliate front, since September 22nd at the last state of the estate, we've been working, I think, extensively and very cooperatively with the unsecured creditors' committee to, in fact, develop a common approach to a compromised plan. And without going too far in knowing this, Mr. Dunn can correct

me if he so chooses, I feel as though we're very close on the economic compromise side of the world. We still have some governance type matters post-emergence that we're trying to iron out. But I believe we've made good progress and I hope they feel the same way.

Also we've had numerous and, frankly, exhaustive meetings and received an awful lot of input from major creditors. As Mr. Miller mentioned in the opening, the group of senior noteholders at LBHI just filed a plan premised on substantive consolidation. We've had multiple discussions with those individuals over time. And certainly, by having filed their plan, it's clear to us what their view is. And, in fact, we will adopt elements of their plan in our proposed plan.

On the other end of the spectrum, we have other groups representing creditors of the domestic subsidiaries that have a view of the world towards nonconsolidation. In fact, not only nonconsolidation but they'll take it a step further to nonconsolidation and recharacterization of intercompany debt. So you've got two ends of the spectrum there.

THE COURT: May I just break in for a minute. There's someone on the telephone who is projecting into the courtroom. If you're listening on CourtCall, please mute your phones now or stop talking if you can't mute your phone. Thanks.

MR. SUCKOW: But needless to say, in developing the amended plan, the debtors have taken into account input from

all of the major constituents. And this would include creditors of not only LBHI but the subsidiary debtors, LCPI, LBCS and LBSF creditor groups and, of course, the creditors' committee.

Just a footnote, since it's been raised in the prior state of the estate, the communication between the debtors and LBI I think has improved. I think there's a regular weekly or bi-weekly call. In terms of settlement, continues to progress slowly but at least we're communicating, Your Honor.

So from a domestic and foreign affiliates perspective, we've received an awful lot of input from all the major constituents. And I think the debtors do fully understand at this point the legal and economic positions of each of those constituencies.

Turning the page, we really had hoped we would be filing a plan by today so that we could divulge more detail of the amended plan. But what I'm providing on the next couple pages is a very high level overview of what we see the settlement framework being. It's really two steps. The first step is a settlement compromise between the senior and general unsecured creditors of the holding company, LBHI, and the creditors of the subsidiary debtors. In that regard, creditors of certain of those subsidiary debtors will have a portion of their recovery reallocated to the LBHI senior unsecured and general unsecured creditors. Likewise, creditors of those

subsidiary debtors that also have a guaranty claim against LBHI will have a percentage of those recoveries reallocated to the LBHI senior unsecured and general unsecured creditors.

And then lastly, nontrading intercompany claims of LBHI against these subsidiaries will be reduced by a certain percentage. Cutting through all this without getting into specifics, we're attempting to create a mechanism to avoid the fight over substantive consolidation recharacterization of debt. It's basically what it is in a nutshell.

Turning the page, similarly, as between the debtors and the foreign affiliates, creditors of the foreign affiliates that hold guaranty claims against LBHI will have a percentage of their recoveries reallocated to the LBHI senior unsecured and general unsecured creditors. And the foreign affiliate guaranty claims as between the Lehman entities against LBHI will be reduced depending on the type of guaranty claim.

So turning --

THE COURT: Let me ask you a question --

MR. SUCKOW: Sure.

THE COURT: -- recognizing that it may be premature since the plan hasn't yet been finalized and isn't yet public. From your description, the compromises appear to remain to a blend in which outcomes will be someplace between substantive consolidation and separate plans with reallocation being a mechanism to achieve that compromise. Do I understand that

correctly?

MR. SUCKOW: That is correct.

THE COURT: Will the plan include what amounts to an allocated percentage that affects that compromise? And is that compromise something that has been the subject of ongoing negotiations with creditor constituencies?

MR. SUCKOW: Yes and yes --

THE COURT: Fine.

MR. SUCKOW: -- to both of your questions.

THE COURT: And is it anticipated that the plan as filed will at least have the support of some of these constituencies or is that support something to be achieved over time?

MR. SUCKOW: It is our hope and expectation that we will -- when filed, we'll have the support of our unsecured creditors' committee if we can get over some of these other issues that we're still to resolve.

Short of that, it's going to be difficult to have had a negotiation with some of these other parties that, for example, are not restricted.

THE COURT: Understood. Okay. Thank you.

MR. SUCKOW: So, in conclusion, on page 13, since March, the debtors have refined the fact base and the legal analysis especially as it relates to the various guaranty claims. The debtors have also refined their understanding of

the positions taken by the numerous Lehman constituents. Mr. Marsal pointed out the debtors have continued to refine their estimate of claims, especially the foreign guaranty claims.

The fact of the matter is the initial plan that we filed did not seek compromises from all stakeholders. This plan will be looking to achieve concessions from all constituencies in one form or the other. But we do think that the proposed concessions will result in a fair resolution of all issues. I hope that the parties that a lack of flexibility may be detrimental to theirs and other economic interests.

And finally, Mr. Miller, I think, mentioned this already. But our timetable -- we really do anticipate filing the plan in the very near future. Obviously, we will review and discuss the plan with the constituencies in the days and weeks following the plan. But we are hopeful, Your Honor, that this is kind of it. We -- you know, there's moving parts. But we really hope that this is -- there's not a lot of flexibility on that front. But the prosecution of the amended plan itself will be dependent on the level of support -- basically goes to your question -- and, of course, the Court's calendar.

And with that, I'll turn it over to my colleague, Daniel Ehrmann, who can address kind of the additional gaiting issues.

MR. MILLER: Your Honor, may we amplify Mr. Suckow's statements about the plan in terms of --

THE COURT: Absolutely.

MR. MILLER: -- what the structure of the plan will be. Ms. Fife will do that, Your Honor.

MS. FIFE: Just one point now that Mr. Suckow mentioned the compromise. The compromise with respect to reallocation reflects the compromise of many issues not just substantive consolidation. That's all we wanted to point out. Thank you.

THE COURT: Okay.

MR. MILLER: And, if I may, Your Honor, I'd like to add some statements. Your Honor, time has been very valuable in these cases. There are many, many constituencies and many constituencies demanding time. And within the framework of Mr. Marsal's aspirational statement on September 22nd, the actual drafting of the plan hasn't been timed to meet with every single constituency to effectuate, let's call it, final negotiations. I think what Mr. Suckow was trying to say is that we will be filing a plan in the next seven to ten days hopefully. And then there will be a period of time that we will expect before there is a hearing to approve a disclosure statement for a series of discussions and negotiations to build a consensual basis for this plan. The objective is hopefully a hundred percent consent. I have to say, Your Honor, given the many constituencies, that's very aspirational. Certainly, we hope to have the UCC, the unsecured creditors' committee,

supporting it and other constituencies. But the objective, Your Honor, is to get a plan confirmed, whether it's a hundred percent consensual or otherwise, well before the end of this year.

THE COURT: Fine. Thank you. Mr. Ehrmann, it's your turn.

MR. EHRMANN: Good morning, Your Honor.

THE COURT: Good morning.

MR. EHRMANN: In addition to obtaining a consensus around a plan of reorganization in order to ensure distributions to our creditors, we obviously will need to resolve the claims population. And as Your Honor knows, the largest claims and most controversial claims stem out of the derivatives population.

While we have made significant progress with all the derivative entities in terms of asset collections, we are still facing numerous challenges in terms of claims resolution and are fearful that our process will be very time consuming and costly.

We have been working over the last several months on a solution to that challenge which is the framework -- settlement framework agreement that we want to discuss here today. As for the plan, we have not published these guidelines yet and hence we'll keep it a very high level framework discussion.

So just to set the stage, there are approximately

forty-five billion derivative claims which are encompassed by about 3,000 contracts represented by close to a million trades. As you can see on the chart that we have on page 16, we have settled about five billion worth of claims or fifty-three percent of the contract, but only seven percent of the trades. So there's a large population remaining.

Also, interesting point is that out of the large population remaining, the big banks, the big financial institutions that were our counterparties represent about forty-eight percent of the actual claims and eighty-five percent of the actual trades.

So going forward, in order to resolve these claims, we will have two key challenges. One is we're really getting to the most controversial claims population and we're getting to the larger population in terms of trade comp. And so there's really two routes that we can pursue here. One is the route that we have been pursuing today which is dealing with this problem contract by contract, and we are very fearful that that will result in extensive amount of work and in drawn out litigation. Two, is trying to find a global solution that we apply to all of the derivative population in a uniform matter.

So we'll go to page 17. What is this global settlement framework that we're talking about? We have been working in collaboration with the UCC and with certain financial institutions that are major counterparties in order

to come up with a framework that would have a consistent set of rules that we would try and apply uniformly to all of the remaining derivative claims population. What the framework tries to do is do two things. One is establish a set of rules that we would apply to everybody in a consistent manner. And two, provide creditors with a commitment to a uniform process and a uniform timeline to resolve the remaining claim population.

As it pertains to the rules -- and as I said, these rules are going to be very elaborate and will be developed in collaboration with the unsecured creditor committee and with some of the financial institutions. But to just give you the major rules -- there are really three. There are three rules that will allow the debtor to value each of the derivative claims. The first rule is that we would value derivative claims at mid-prices at the end of the day of the termination date of the derivative contract. There's one exception to that rule which is that if the counterparty can't satisfactorily prove to us that they had an economic closeout, at a different point in time during the termination date, we will accept that different point in time.

Number two, we will look at the portfolio of trades that are in a derivative contract based on a portfolio aggregation methodology which is really a netting of different derivative trades. And those netting rules are still being

developed as we speak.

And number three, once we then have a price, we will allow for a bid-to-ask allowance on top of the mid-price based on commercially reasonable rules that we are still developing.

Those are the rules. There are two exceptions to these key rules which are on the next page. One is if the counterparty has actually replaced the trades with identical trades in a commercially reasonable manner at termination date, we will take their termination value -- their replacement value. I apologize.

Two, if the counterparty has actually used the market quotation process under the 1992 ISDA and adopted that in a commercially reasonable way, we will use the number that comes out of that market quotation methodology.

So those are the rules. Next, in terms of process and timeline -- in terms of process, as I said, we are still in the midst of developing these rules. We intend to continue to work with the creditors' committee in order to refine the rules. And then we're actually going to work with a set of financial institutions that are major counterparties to Lehman in order to get input on those rules. And then we actually would like to publish those rules and the result of those rules in order for the different creditors to vote on those rules and the result in the context of the plan of reorganization. So we will effectively create, by derivative entity, a separate class

for the derivative claimants so that they can vote on this framework.

We --

THE COURT: Let me --

MR. EHRMANN: Sorry.

THE COURT: -- stop you for a second just so I understand what you've said. Are you saying that the plan will include a mechanism that will be sent out for what amounts to popular vote by members of the derivative class and if that class accepts the set of rules for valuing all derivatives within that class, even dissenting holders within the class will be bound by the vote in accordance with 1129 principles?

MR. EHRMANN: That's the expectation, correct.

THE COURT: Okay.

MR. EHRMANN: That's the hope.

MS. FIFE: Yes.

THE COURT: That's correct?

MR. EHRMANN: Thank you.

MS. FIFE: Yes, that's correct.

THE COURT: Okay. I just wanted to make sure I understood it.

MR. EHRMANN: That's correct.

MS. FIFE: That's the proposal.

MR. EHRMANN: One last point here. And this is -- again, this is somewhat aspirational but we are targeting to be

able to provide each individual derivative creditor with the number that would result out of the rules by April 30th.

Next, just on page 20, this is merely a recap of what we believe to be the benefits of the settlement framework. We believe that it's a framework that will apply uniform rules in a transparent way to all of the creditors. We believe that we have set up a process that is collaborative. We also believe, however, that the same way the plan of reorganization -- this framework will require compromise by a number of creditors. But we believe that those compromises largely outweigh the alternative which we believe to be many years of drawn out litigation in this case.

THE COURT: Thank you, Mr. Ehrmann.

MR. EHRMANN: Thank you.

MR. DUNNE: Good morning, Your Honor.

THE COURT: Good morning, Mr. Dunne.

MR. DUNNE: For the record, Dennis Dunne from Milbank Tweed Hadley & McCloy on behalf of the official creditors' committee. I'd just like to share the committee's thoughts and perspectives on the case and the status of the plan. We echo virtually all of the comments that were made by Alvarez & Marsal as well as Weil. We've worked around the clock with the debtors towards the goal of filing a plan that's not a placeholder plan. That's a plan that we can march towards confirmation with.

Before I get into some of the details, let me explain what were the committee's objectives and goals in this process in a little more detail. As the Court is aware, we currently serve as the official committee for each of the U.S. debtors in cases pending before Your Honor. In addition, I think that we are currently the only entity where the principals are fully restricted and so we're sharing nonpublic information real time with the debtors and thus are making decisions on a real time basis. And with the debtors, I believe we're the only other fiduciary with broad duties to either the unsecureds or the entire estate here.

We do not want this plan to be a springboard for litigation but rather to serve as a framework for settlement. What that means is we will not adopt any one party's position in toto. We've met with every creditor constituency. We have a sense of what they would like to see in the plan, the parameters that they would find acceptable. And the committee has considered those views and it will infuse the ultimate decisions that the committee makes. But what we are striving to do is come up with a reasonably good and justifiable plan. It may not be anybody's version of a perfect plan. But it's a good plan and it's one that we can defend to all parties. And it will have baked into it a number of potential compromises and settlements.

Towards that end, the committee has charged its

advisors with basically calling balls and strikes on a bunch of legal issues, to dispassionately and impartially go legal issue by legal issue and advise the committee of what is the probability weighted outcome in litigation and how best to avoid it with a realistic compromise.

We have substantially completed all of those analyses. We've shared our views with the debtors. We hope that a lot of that and expect a lot of those parameters will be baked into the plan. So at the end of the day, we basically have two goals. We hope that we'll be back in front of you shortly where there will be a revised plan that has the support of the creditors' committee on not just the economic issues but also the noneconomic terms contained in the plan and that we can both stand up in front of the Court and advise Your Honor that the estate's two fiduciaries support the plan.

One last point. We have been working also on a discovery protocol. This is a post-plan filing action item. But after the plan is filed, a lot of the parties are going to want to know how do we build up to these various compromises and settlements contained in the plan. We're working on a protocol to provide access to the material facts relevant to each of those legal issues which we hope to settle in the plan and in that manner provide access to various parties in interest or anyone who so chooses to avail themselves of that protocol.

And with that, unless Your Honor has any questions, I'll cede the --

THE COURT: I don't. Thank you.

MR. SHORE: Good morning, Your Honor. Chris Shore from White & Case. I had some prepared comments and then I'm happy to answer any questions the Court may have. We've appeared before Your Honor a number of times in these cases. But let me begin by an introduction. White & Case has actively the ad hoc group of Lehman Brothers creditors in these cases. It consists largely of pension funds, municipalities, institutional holders and secondary holders including distressed funds. While the group's members hold claims across the Lehman capital structure, the holdings are principally weighted towards direct claims against LBHI in the form of senior notes and similar claims. Many of the group's holders are large holders and, in fact, perhaps the largest creditors in these cases. But others are relatively small. Notably, certain of the group's members are pre-petition par holders who are among those most affected by Lehman's collapse.

On December 15th, 2010, as mentioned, the group filed a proposed plan and related disclosure statement. At that time, we disclosed we held over twelve billion dollars of claims across the Lehman capital structure including approximately 9.4 billion at LBHI.

Since the filing of that plan, a number of additional

entities have joined the group including the City of Fremont, Canyon Partners and PIMCO. As a consequence of these additions, the group's holdings have almost doubled in the last month and the group now holds over twenty billion dollars of claims across the Lehman enterprise including approximately sixteen billion of senior unsecured claims at LBHI. We're in the process of adding additional members and as soon as our holdings stabilize, we'll file addition appropriate disclosures with the Court. But as far as things stand today, we believe, Your Honor, that our group now holds substantially more claims than the members of the official committee or any other member -- or any other group in this case and, in fact, believe this group is the largest ad hoc group of creditors ever put together in any Chapter 11 case.

While the debtors have expressed their own views as to what, if any, progress is being made given that our plan is currently on file, we believe it is appropriate and necessary for us to provide our perspective on Your Honor's questions and focus on a question that really wasn't addressed which Your Honor asked which is the need for creditor involvement in these cases.

At the outset of these cases, Mr. Marsal stated that the debtors' internal objective was to have a plan confirmed within eighteen to twenty-four months. Obviously, that's not happened and for good reason. As complex as these cases seemed

when they were first filed, they've only become more complex over time. One need look no further than the RASCAL's litigation or the Repo 105 disclosures, the related whistleblower letter and the attorney general's lawsuits that were just filed against E&Y to see just how much more complexity exists in these cases than anyone expected. That said, our principle issues, concerns and the reasons we filed this plan are not based upon the debtors' failure to achieve exit within two years. Rather, our overriding concern is the debtors have not used any of that two years to facilitate intercreditor negotiations that are going to be essential to moving this process forward in a meaningful way.

I'm going to come back to that but it's clear that the debtors have not established any communication or discovery protocol between creditors. They have not called intercreditor meetings. They have not sought to foster other formal or informal creditor groups forming within the capital structure. And as of today, they still have no creditor support for any plan on file. From a plan process standpoint then, very little, if any, real progress has been made towards exit.

Why are creditors important here? The debtors' current plan on file as well as the one that was just outlined, purport to recognize the corporate integrity of each debtor. That is, to set up plans based upon a statement of the assets and liabilities of each debtor. They then propose an economic

resolution of the hundreds of billions of dollars of claims by and between the twenty-three debtors in these cases with pay-overs and claim caps and claim discounts and other bells and whistles. We suspect the reason why the architects chose such a convoluted structure relates to the perceived evidentiary burden that comes along with substantive consolidation which would get rid of all of those issues. But any one who opposes substantive consolidation in these cases does so on an untested premise that one can ever obtain a judicial determination of each debtor estate's respective assets and liabilities in these cases. Based upon what we've been able to see here, nonconsolidation of Lehman entities will prove a fiction and substantive consolidation, by default, is going to be the only way that we can get these cases out in a reasonable period of time and do so according to the Bankruptcy Code.

To be clear, the plans we've seen from the debtors are not true deconsolidated plans. They are admittedly books and records plans which start with the books and records of Lehman and make adjustments off that. But there's a substantial difference between a books and records plan and a nonconsolidated plan. Any plan that purports to accept Lehman's books and records as a starting point at face value without validation or correction in accordance with the Code presents a significant legal and equitable problem for the Court and all creditors. One need look no further again at

Repo 105 to understand that the books and records of Lehman as they exist do not reflect interdebtor transactions of economic substance or a fair and legal representation of interdebtor relations. As the Court knows, there are a plethora of interdebtor issues that have already arisen in this case that have been tabled for further resolution. And we believe there are substantially more interdebtor disputes to follow. For obvious reasons, however, there are substantial limitations on how far these debtors and their representatives are able to pursue any litigated resolution of interdebtor disputes. As a result, and you've heard it now multiple times today, the debtors have a hope plan which is based upon the hope that creditors accept what the debtors propose. Or, if the debtors (sic) do not accept the proposal, the debtors do not have a legal path to confirmation and exit. One might fairly ask what's the problem of hoping for settlement. The problem, from our perspective, is that without a legal path to exit there's no impetus for creditors to step forward and join in the plan process. In fact, that's exactly been borne out in these cases. There's been a plan on file since last March. There has been almost no engagement between creditors on issues related to that plan or any dialogue in the court reflecting creditor views of the plan. Until there is a possibility of proceeding without consent, no creditors are going to consent to anything.

To be crystal clear, the debtors' plan, based on the books and records, we believe, could just bring more delay and gridlock if we get to the point where the hope doesn't pan out because the relationship between the Lehman entities and the allocation of assets and liabilities based upon the interdebtor issues sit squarely in the path to any exit. To put some significance around -- or some context around the significance of the interdebtor issues, you just need to look at the three main estates in this case: LBHI, LBSF and LCPI. A third of LBHI's total distributable assets consist of intercompany receivables from other debtors. A sixth of estimated allowable claims at LBHI, or more than forty billion, are either direct intercompany claims or related third party claims such as claims arising under what has been referred to as the board resolution guaranties. While a small fraction of LBSF's total distributable assets, around seven percent, consists of intercompany receivables, more than half of LBSF's total estimated claims are asserted by other debtors. With respect to LCPI, more than seventy percent of the total estimated claims against that debtor are claims that are asserted by other debtors.

So in the simplest of terms, in the absence of substantive consolidation, someone, in our view the creditors, are going to have to prosecute and defend these claims and allocate recoveries if the hope doesn't pan out. To that end,

on June 29th, 2010, our group filed a preliminary objection to the debtor's plan and disclosure statement based on these concerns. Notwithstanding our objection, the group has consistently expressed a desire to see these Chapter 11 cases resolve themselves quickly and with minimal administrative overhead. Accordingly, at that status conference, we suggested that the Court adopt a set of discovery procedures for the prompt and efficient resolution of interdebtor issues. At the hearing, the debtors expressed maybe a reluctant willingness to consider adopting a process for transparency and creditor participation, but over the last six months we've heard numerous promises of action that have not panned out at all. This Court has twice now asked what's happening with any kind of procedures and protocols. To date, there has been no proposal put forward. We have not seen a single concrete suggestion as to how the debtors or the committee intend to run the confirmation process. And nor was anything outlined even today. To add to the problem, the debtors have rebuffed or provided insufficient responses to our group's discovery requests regarding interdebtor issues and we don't believe they responded to anybody else's discovery requests. For instance, although the debtors have established a data room, it still contains a relatively small number of documents the bulk of which are either public or nonresponsive to interdebtor issues. As a plan proponent now, we are in a position of not being able

to wait for the debtors to find a path to exit nor to have the debtors and the committee dictate what the process is going to be. In the absence of something coming forward in the very near term, we're going to file a motion then to establish procedures related to the pursuit of any plan including discovery protocols for anybody who wishes to participate. The Court can then approve what it sees to be the most reasonable and appropriate solution but there has to be something put forward if we're going to proceed to exit.

As for our plan, following the July omnibus hearing, it became clear to the group that the debtors had little inclination to facilitate a meaningful process to resolve interdebtor issues. Moreover, over the summer and early fall, it became clear that creditors in these cases can't sit back and wait for a hope plan being confirmed while professional fees and expenses continue to accrue at historic rates. Accordingly, the group proposed and filed its own plan. Now I don't see today as the day to discuss details or plan mechanics or the merits of this plan or any other alternative plan, but in essence, our plan is based, as was said, on a substantive consolidation of each debtor estates as well as certain other Lehman entities. Based on all that we've seen, we believe that the Court can and should enter that relief if we need to get there. That is, we have a litigated out if necessary. But we need to be clear on this point. We want economic peace. We've

said it before; we believe it and that's where we believe these cases have to go. A key feature of our plan then are optional settlement treatments designed to avoid the cost and delay associated with litigation over the appropriateness of substantive consolidation and other related interdebtor issues. With sufficient creditor support, some or all of the debtor estates and their creditors can bypass any litigation under our plan. But unlike the debtors' plan, ours does allow for a judicially ordered resolution with respect to groups that do not consent. In this respect, we are not constrained by merely hoping for acceptance; we have a path to exit.

The group also believes that in contradistinction to the debtors' construct, substantive consolidation has key benefits to all besides avoiding the war. First, it allows for a recombination of Lehman assets within the enterprise which can accrue substantial additional value without the overhang of interdebtor issues. Second, substantive consolidation will resolve dozens if not hundreds of asset ownership issues and other interdebtor issues that are left open under a books and records plan. Even assuming confirmation of a hope plan based on books and records, to be clear about this, there are going to be years of additional post-confirmation litigation and the accrual of massive professional fees. There has to be a better alternative than that.

In connection with proposing our particular

alternative, the group has met with a number of significant parties in these Chapter 11 cases as well in addition to the debtors and the creditors' committee. We've met with representatives of foreign affiliates and a number of other ad hoc groups and large creditors. We have additional meetings scheduled going forward with groups, trustees, foreign representatives and the Lehman board. We understand that the debtors are now seeking to adopt certain of our mechanisms in their plan and we'll be their plan closely and engaging with them.

But despite the devotion of our time to this problem, we have no pride in authorship over our plan and hope that a consensual resolution of these Chapter 11 cases is ultimately reached. In this respect, we welcome further plan and process-related discussions with other interested creditors, parties in interest and the debtors themselves. In fact, I personally invite anyone who would like to add input on discovery protocol before we have to file our motion to call me directly. We really should all be getting together on that. I'd be happy to discuss the plan with anybody as well as my partner, Gerard Uzzi. Our door is open and we're prepared to move the process forward.

With respect to the process, as noted in our disclosure statement, we're, for the time being, in a holding period awaiting a long promised amended plan from the debtors.

It is our intention that provided that plan is filed in the near term, we would seek approval of our disclosure statement contemporaneously with the debtors to allow for joint solicitation and concurrent discovery and prosecution of the plan. Neither the creditors nor the Court can afford to wait indefinitely, though. We trust that this time the debtors are accurate in their predictions of an imminent filing, but if the opposite proves true, it may be simply that we have to come back to the court and seek a disclosure statement hearing in the absence of the debtors' plan. Every month in these cases accrues more professional fees than are awarded in almost any other Chapter 11 case for the life of the case and we need to get the process moving.

Unless the Court has any other questions, I've got nothing further for now.

THE COURT: Actually, I haven't asked you any questions.

MR. SHORE: Okay. If you have any questions.

THE COURT: I have a bunch of them but I think this is probably not the right time to ask them. I think this process needs to ripen a bit more. And I don't think it would be useful for me to ask questions before I've had an opportunity to allow this process to move forward after the debtors' plan has been filed. I'm conscious of your concluding remarks in which you indicate that you're very willing to work with the

debtor in the development of a consensual plan and you're anxious to see which parts of your work product have been adopted by the debtors. Presumably, if sufficient accommodation has already been made, there may be an opportunity for you to work within the confines of the debtors' plan. If not, I'm hearing you suggest that a competing plan process in which one of the plans calls for a substantive consolidation is, in your view, a more efficient process than developing a consensual plan as proposed by the debtors' professionals. I think that's a highly debatable proposition but I'm not going to debate you on it now.

MR. SHORE: Okay. All right. Thank you, Your Honor.

THE COURT: Okay.

MR. MILLER: If Your Honor please, Harvey Miller. Just to clarify the record, Your Honor, Mr. Shore's statements are overblown. We didn't come here today to debate the merit of substantive consolidation or all the other issues that have to be resolved in this case. For Mr. Shore to stand up here and say this case has gotten more complex is utterly absurd. The two years that have been spent have been determining what is this entity -- these entities that are before the Court. And there is an awful lot of information that has been furnished, Your Honor. Every constituency has a financial advisor who has signed a confidentiality agreement including the ad hoc committee. One of the problems in this case is Mr.

Shore's clients don't want to be restricted. They want to get into the asset levels because there's constant trading going on in the claims in these estates. And that makes a difficulty in providing them with information.

Now, Your Honor, I wrote a letter to Mr. Shore on November 10, 2010 concerning his discovery requests. There was never an answer to this letter. We wrote a letter on January 3, 2011. There hasn't been any answer to that letter. We had a meet and confer with the ad hoc representatives, Your Honor. And we said we had to have one discovery process for everybody, not two or three, four, five different times. And for Mr. Shore to say there's no exit in our plan, there is an exit. And if there's anything that's a hope plan, hope belongs to the ad hoc creditors' plan. It's a compromise and settlement plan very much like what was described today. It's going to depend on constituencies. And Mr. Shore stands here, Your Honor, and he says substantive consolidation like that is the simplest thing to get in the world of bankruptcy. He forgets about the holdings and decisions of the Second Circuit, that substantive consolidation is a Draconian remedy. And there are plenty of creditors out here, Your Honor, who believe in noncon, if you want to use that word. And what our -- or the debtors are proposing, Your Honor, is almost, in the broadest terms, a way to avoid litigation over substantive consolidation which, again, will take this Court in endless hearings, endless

discovery about each and every aspect of the operation. It's in the economic interest of everybody, Your Honor, to reach a fair economic resolution of these cases. And that's what the debtors want to do.

And as I said before, Your Honor, time is valuable. It's a very big case. And to compare this case in terms of professional fees or almost anything to any other Chapter 11 case, it's not a comparable situation.

We have a creditors' committee, Your Honor. We have spent enormous amounts of time with this creditors' committee which is the anointed body for negotiating a Chapter 11 plan. And, Your Honor, we are not adopting the work product of White & Case. These negotiations about how to figure out the economic solution have been going on since April. And the idea, and as Mr. Suckow said and Mr. Marsal said, is to find the solution in which not everybody's going to be happy. In fact, everybody will be a little bit unhappy. And that will be a good deal, Your Honor, if we can get it through.

And in terms of the exit, Your Honor, if we don't get a hundred percent consent, we do have an exit. We will go forward. We will go forward to a confirmation hearing. What we're trying to avoid is a confirmation hearing which will consume this Court and the parties for months.

Everybody involved in this case, Your Honor, will come to conclusions at some point in time that economically a

compromise and settlement of all these issues, and on very serious issues, Your Honor -- that's not only substantive consolidation. It's recharacterization of debt. It's corporate authority. The Repo 105, Your Honor, is a red herring. If the former attorney general thought that was a good lawsuit, it's a Martin Act lawsuit, has nothing to do with the administration of this estate, Your Honor. And if we look at the dollars involved in Repo 105, it's not going to make a big difference. And whether there are claims that belong to this estate or not on Repo 105 is a determination that will have to be made.

But what I want to point out, Your Honor, is that since April of 2010, there has been very substantial progress. Other constituencies have not complained, Your Honor, about a diligent -- access to information. Other constituencies have their own views. And what we are trying to do is put all of this together. And we've listened, as Mr. Suckow said, to every constituency including the ad hoc committee. And we've tried to come up with something that incorporates the best features of everything. But we have -- we will have a plan on file, Your Honor, which has an exit strategy and which can be prosecuted to fulfillment and confirmation. And it's going to be a better plan, Your Honor, than the ad hoc plan. And to say that they are the only serious creditor -- I think he mentioned twenty billion dollars. We're talking about claims of over 300

billion dollars, Your Honor. And every creditor constituency has its own problems or its own desires. What the debtors are trying to do is be the mediator in effect of all of that, Your Honor.

So we didn't come here, as I said, prepared to argue substantive consolidation. Someday we may be here to argue that. But this is not the time, Your Honor. And we did not expect to talk about the issues that Mr. Shore brought up. And I can't let the record sit the way he left it, Your Honor. Thank you.

THE COURT: Okay. Mr. Huebner?

MR. HUEBNER: Good morning, Your Honor. For the record, I am --

THE COURT: Do you have a plan, Mr. Huebner?

MR. HUEBNER: I definitely do not.

THE COURT: Good.

MR. HUEBNER: And let me be -- let me explain exactly why I am standing, Your Honor. For the record, I am Marshall Huebner of Davis Polk & Wardwell on behalf of LBIE which is also a rather large and to date somewhat less noisy creditor in this case than Mr. Shore's clients.

Your Honor, we actually do have a plan. And it's not filed. And hopefully it never will be filed. And I want the silent majority's view, at least as I see it, to be as clear as Mr. Shore's very detailed presentation. I didn't come here

with a twenty-five page state of the estate from my perspective because that's not what the Court asked for from each individual creditor. Otherwise, the line was out the door this morning. There would currently be a line up here at the podium to make the same speeches.

So let me just be very compressed but very clear. We view the legal issues in Mr. Shore's plan very, very differently than White & Case does. We stand absolutely ready to litigate them if a compromise can't be reached. We stand ready within seven to ten days to file a plan. We have no intention of ever doing so because it's the wrong approach. If this case evolves into the LBSF creditors filing their plan and Mr. Shore's LBHI parent creditors filing their plan and LBT, which has a thirty-four billion dollar claim filed in the plan, and LBIE, which has huge claims, filing a plan, we'll be here more than months. We'll be here years. Whether we end up ultimately speaking only for LBIE supporting what the debtors and the committee are working on which we have not yet seen, I don't know. What I can tell you, as the Alvarez & Marsal gentleman correctly stated, we are working extraordinarily hard at the most senior levels to resolve the issues outstanding between LBIE and the debtors which are very serious issues. We've had in-person summit meetings in New York with named administrators and senior A&M people, the people you've heard from at the podium today. We have another one coming up in

February. I'm hopeful that we can get to a deal. But I want there to be no mistake. The primrose path that Mr. Shore described which is, Your Honor, our plan is great because it will take us on the quick track to confirmation and provide a method for roping everyone in, like it or not. That is simply totally false. And again, I'm not going to make a detailed presentation on why it's false. There are some things in their plan that are okay. There are some things in their plan that are totally misleading and misrepresent existing case law. There are things in their plan that are laugh-out-loud funny like if any entity doesn't turn over all of its assets, automatically it's death-trapped into receiving nothing and has no claims irrespective of the law.

But that's not today's hearing. So I'm not going to give a parallel presentation. I just want to be clear. There are lots of people that could have gotten up and explained the world as they see it like Mr. Shore did. Most of them hopefully will not do that. Maybe I'll serve as a bit of a proxy. But I do share Mr. Miller's view that the passage of time has, in fact, made many things more clear rather than less clear. And Mr. Shore actually mentioned RASCALS which was sort of an odd example. That's true. There was a very serious, very complex dispute about ownership among the Lehman entities of certain classes of assets. It was teed up. It was presented to the Court. It was litigated. It was ruled on.

And now the parties know. And another issue is now behind us as opposed to in front of us.

So, you know, the claim reconciliation process is another good example. Again, I'm not signing on to any of the specific numbers on A&M's presentation. I didn't see it before. But what I think clearly is directionally true is that as the parties talk, the claim and the gaps between them get narrower and narrower. The legal issues yet to be resolved get smaller and more attackable and digestible. And that's certainly what's happening with us. And I'll be very upfront about this. The claims that we now -- we believe we have against the estate are still very sizeable. But they are very, very much smaller than the claim that has a protective matter like all creditors do with limited information at the time and bar dates were originally filed. The legal issues that separate us continue to get narrowed as we have discussions. And we're soon hopefully going to enter the phase where we're really negotiating over appropriate discounts for each theory as opposed to gathering wool about the theories as a whole.

So I'll stop there because, again, if sort of Immanuel Kant was here and everyone acted as if he acted, this would be very terrible indeed. But I do want to be very clear that we disagree with almost everything he said and stand ready, should we need to, to send this in the type of direction that he would like to see. You shouldn't be impressed by his twenty billion

dollars. You shouldn't be impressed by his sixteen billion. What he's really telling you is we're the parent creditors and what we want is what's good for the parent company and very, very bad for everyone else. I understand that. They're entitled to advocate for that. But to stand up here as some sort of arbiter as the discoverer of the elixir or the process that will save us all, that's really not okay. In fact, there are many, many more billions and tens of billions of creditors who are very misaligned with them. And should that day ever come, there will be quite a war indeed.

THE COURT: Thank you, Mr. Huebner.

MR. DUNNE: Your Honor, may I just make a suggestion to try to avoid the constant back and forth?

THE COURT: I don't think there's going to be a problem with constant back and forth. I think we're going to be very quickly coming to the end of the status conference.

MR. DUNNE: Okay. Good because I'm not going to stand up -- and I could go through and advise White & Case and the other ad hoc what the countervailing arguments are in favor of decon. I could -- and I'm not going to --

THE COURT: By the way, I actually know all these arguments. And they were alluded to rather discreetly in the September 22, 2010 status conference in which Mr. Marsal, in a manner that I thought was rather delicate, identified without advocacy arguments in favor of substantive consolidation and

arguments that were opposed to substantive consolidation and took no position one way or the other as to whether substantive consolidation made sense in this case.

Additionally, I am personally familiar with all applicable Second Circuit case law on the subject of substantive consolidation because, at least in an earlier day in my life, I used to do nonconsolidation opinions and I'm really glad I don't do those anymore.

MR. DUNNE: I was going to say my condolences, Your Honor.

THE COURT: So I'm fully aware of the applicable law. I recognize how incredibly difficult it is to achieve substantive consolidation except in a consensual setting and have taken with more than a grain of salt everything I've heard from the ad hoc committee and everybody else, for that matter.

MR. DUNNE: And, Your Honor, what we're trying to accomplish with the debtors is a compromise of those issues. It's not going to be, as we said, a wholesale adoption of any one party's interests. So let's wait to see what the plan looks like. We'll have discussions with the creditor constituencies, Mr. Huebner's clients, Mr. Shore's clients and everyone else, and gauge their reaction. They may like a lot of what they see in that plan. And we're counting on the fact, and everyone has said this, that we should all try to avoid litigation here and getting caught in the quagmire of multiple

years to figure out whether one party's complete win position is going to prevail because there's a real benefit to emerging from these Chapter 11 cases this year, beginning distributions. And I'm sure all the creditors who are our constituents are very focused on the time value of money. We think that's a real benefit that's going to be embedded in the debtors' plan that hopefully we can support.

In the interim, I think that we can have dialogue on the discovery protocol, hopefully have something in place and roll that out shortly after the filing of the plan. Thank you.

THE COURT: Okay. Mr. Miller, do you want the last word?

MR. MILLER: The debtors have nothing further, Your Honor.

THE COURT: What's that?

MR. MILLER: The debtors have nothing further.

THE COURT: Fine. I think -- here's what I think makes sense. I think this has been a very useful public airing of issues that surround the plan process. There's an obvious open and unresolved question concerning a discovery protocol. I believe that, if I understood the committee's earlier presentation, that was something that the committee was interested in helping to develop as well. Mr. Shore made a -- almost a solicitation for people to call him. I'm not sure that's a good idea but anybody who wants to call him can find

his phone number on the internet. There's certainly nothing that I'm intending to do to discourage open communication among all parties in interest. But I do think that some level of coordination makes sense, that the plan which has been described by the debtor but which has not yet been revealed in detail, to the extent that it enjoys the support of the official committee of unsecured creditors, we'll have what I think is something close to prima facie validity going for it and, under those circumstances, may turn out to be the vehicle that is most efficiently to be reviewed and modified, if necessary, to achieve consensus with the greatest number of creditors. I hope the process is a successful one and I look forward to presiding over hearings that will no doubt take place in the months to come.

We have a calendar that includes other items this morning. And I recognize that most people are here for the status report. Accordingly, I'm going to take about a ten minute adjournment to give people an opportunity who wish to leave to do so. And we'll resume at a quarter of the hour.

(Recess from 11:36 a.m. until 11:49 a.m.)

THE COURT: Be seated, please.

MR. SINGH: Good morning, Your Honor. Sunny Singh, Weil Gotshal & Manges, on behalf of the debtors. Your Honor, the only motion on the LBHI portion of this morning's agenda is the uncontested motion to clarify the order authorizing

procedures for settlement of derivative contracts.

Your Honor, the motion requested a clarification to the procedures that were ordered in December 2008 and supplemented from time to time to make it clear that the debtors' authority is not limited if there's an adversary proceeding pending or if there's a party other than the direct counterparty to a settlement such as an indenture trustee.

There was only one response filed, Your Honor, and that was by BNY in its capacity as indenture trustee. That's been withdrawn in light of the revisions that we made to the order and filed in advance of the hearing. Your Honor, those changes are consistent with the changes that we made to the first -- to the fourth supplemental order that make it clear that any party that objected and was carved out from that order must consent to a termination in order for the procedures to apply to them. Other than that, Your Honor, no other responses were filed. And unless you have any questions, we'd ask that the order be entered.

THE COURT: I don't have any questions. I've reviewed the Bank of New York objection, unfortunately before I saw the withdrawal of the objection. So I'm familiar with the issues. And let me just ask if there's anybody from Bank of New York present. Apparently not. The motion for entry of an order clarifying the scope of the procedures for settlement of pre-petition derivative contracts is approved.

MR. SINGH: Thank you, Your Honor. The LBI portion of the agenda is next.

MR. WILTENBURG: Good morning, Your Honor. David Wiltenburg, Hughes Hubbard & Reed, for James Giddens as the SIPA trustee. With adjournments, there's a single matter on the calendar today. There's the second motion of Unclaimed Property Recovery Service, Inc. for an order authorizing and directing immediate payment pursuant to this Court's May 25, 2010 order. The motion has been briefed and if Mr. Battista would care to make some remarks on behalf of the motion, I would invite him to do so.

THE COURT: He's coming to the podium now.

MR. BATTISTA: Good morning, Your Honor. Paul Battista for Unclaimed Property Recovery Services. I had hoped that this matter would never be back before the Court. You may remember that almost two years ago, my client, which served as a finder, pursuant to a contract with Lehman Brothers, brought a motion to be paid for its services. At the time, it was our understanding that the Office of Unclaimed Property in the state of New York held as much as six million dollars in unclaimed property attributable to Lehman Brothers as well as to various predecessors and subsidiary corporations of Lehman Brothers. The Court urged both sides to reach a resolution of the issues presented by my client's contractual claim of ten percent of funds recovered from the unclaimed property division

of New York State.

We, over the course of time, have had to bring several motions including the motion about a year ago for at, frankly, the Court's suggestion to get to first base by having the state of New York actually transfer to the clerk of the court the funds involved in this. At the time, as I mentioned, we thought there might be as much as six million dollars there. There proves to be fourteen million dollars there.

At the Court's urging and after several motions we had brought before they were resolved, we did reach an agreement in May of last year with the -- with Lehman Brothers, the debtor under which, as I interpret it and I think the contract is quite clear, my client is entitled to ten percent of the deposited funds. The deposited funds are defined as the funds held by the state of New York and deposited with the clerk of the court.

We did receive, again after bringing a motion that did not need to be resolved by the Court -- it was the motion -- the issues raised by the motion were resolved after the papers were served but before the Court was required to rule. We did reach an interim agreement with the trustee under which --at the time, there were in excess -- the funds from the state of New York came in in stages beginning, I believe, in October of 2010.

THE COURT: Mr. Battista, I'm actually familiar with

the history and I've read the papers. And I also understand that the trustee is really seeking what amounts to an adjournment so that allocation issues with other Lehman entities can be resolved before further funds are paid to your client. Obviously, you're showing -- or your client's showing extreme impatience with that. And I don't want to hear anymore background. Tell me why you're here today.

MR. BATTISTA: Your Honor, we think the stipulation is quite clear, that we are entitled within ten days of the receipt of funds from the state of New York to ten percent of the aggregate amount received. At the moment, more than fourteen million dollars have been received. We calculated the present debt, the present fee, at 680,000 dollars based on the number as it existed in late December. We think this is a simple matter of applying the ten percent to the amount of funds deposited by the state of New York with the clerk of the court.

THE COURT: Trustee says that the stipulation only obligates payment once the funds have been received.

MR. BATTISTA: And they were received. The deposited funds are defined as the amount transferred by the state of New York to the registry of the court. I understand what the trustee is saying is that it needs to go through a process with LBHI to determine which of the two is entitled to the fourteen -- what portion of the fourteen million dollars in

funds that have been deposited. Our position is that the stipulation is quite clear --

THE COURT: I know what your position is. I've read it.

MR. BATTISTA: And at this stage, even assuming that the trustee is correct that the timing of the payment is somehow subject to whatever process LBHI and LBI are going to go through to whack up or allocate the funds, there's no sense to that provision. We could theoretically be waiting until this entire proceeding is wound up. Again --

THE COURT: Have you explored a holdback of some sort that would accommodate the allocation issue or did you just decide to press forward and continue to litigate this issue?

MR. BATTISTA: Well, one --

THE COURT: Could you answer the question?

MR. BATTISTA: We obviously are here --

THE COURT: Did you explore a holdback with the trustee?

MR. BATTISTA: We had some discussions about a holdback.

THE COURT: It seems to me that this entire issue has been litigated unnecessarily. I read your papers. I read Mr. Gelb's declaration. And, frankly, this is another indication of too much litigation and not enough negotiation. I suggest that you proceed with negotiations leading to a reasonable

holdback. You may disagree as to that. But the trustee is going to have a full opportunity to avoid payment risk. If there's a meaningful claim that Lehman entities have to these funds, that needs to be determined. And I read your papers and the relative de minimis funds that are allocated to Lehman. But I also read the papers in response suggesting that there may be other claims far greater than as identified in Mr. Gelb's declaration. And I'm, frankly, disappointed that the parties haven't tried to explore a business solution to what is fundamentally a business issue. If you're looking to win today, the answer is no.

MR. BATTISTA: I understand.

THE COURT: If you're looking to reach an agreement today, I suspect you could do that if you spoke with the trustee's lawyers.

MR. BATTISTA: Well, can we go out into the hall and do that right now?

THE COURT: This isn't a personal injury case. You can take the time that's necessary to do it right. You're not getting relief today. To the extent that the trustee's response is what amounts to a request for an adjournment, that request is granted. And you can work out what you can work out between now and April.

MR. BATTISTA: Thank you, Judge.

MR. WILTENBURG: Thank you, Your Honor. I believe

that concludes the LBI calendar today.

THE COURT: Okay. What we're going to do is adjourn until the 2:00 adversary proceeding calendar. But there are parties who are in court today representing the interest of the fee committee. We're going to have what amounts to a chambers conference except we'll stay in the courtroom for it. Those parties who are present simply as observers will go to lunch. And everybody else who's here for the fee committee discussion will stay. We'll take about a five minute break to allow the courtroom to clear.

MR. WILTENBURG: Thank you, Your Honor.

(Whereupon these proceedings were concluded at 12:00 p.m.)

I N D E X

R U L I N G S

C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

Lisa Bar-Leib
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Date: January 14, 2011